

Quid Novi



VOL. IV NO. 9

McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITE MCGILL

November 2, 1983
2 novembre, 1983

Quid Novi provides complete coverage of the Forum National Conference on pornography and censorship, which took place LAW LIBRARY

Friday, October 28.

NOV 7 1983

McGILL UNIVERSITY

Pornography and Censorship

Ken Swan

One of the most controversial speakers of the day was Ken Swan, president of the Canadian Civil Liberties Association. His position is that the key to obliterating pornography lies in education and counter-propaganda, rather than in legislation. Unfortunately, one of the closest allies to the civil libertarian movement is the feminist movement, and the issue of how to deal with pornography has created a rift between the two groups.

Swan argued that legislating against pornography is simply not a viable alternative. The danger to freedom of expression is simply too great. The only time when action should be taken, Swan conceded, is when direct harm can be proven. He defined "harm" as being actual harm, and there is no study conclusively showing that the violence that is perpetrated against women results directly from pornography.

That is not to say that the area of pornographic materials is a free-for-all. Swan has no trouble with legislation dealing with time, place and manner restrictions (such as X-ratings), or with legislation

Cont'd on p. 7

Lynn King

The first speaker of the Forum National conference on pornography and censorship was Lynn King, a committed feminist whose most recent legal foray was as counsel in the Ontario Censor Boards case. King strongly supported the argument that if censor boards are to be given any power, that power should be strictly defined, prescribed by law, and not subject to arbitrary or excessively subjective decision-making.

The greatest difficulty with the powers exercised by the Ontario censors, King argued, was that none of the above criteria are met by the Board. The only existing criteria are those set out in the guidelines. Those guidelines do not have the legal force of regulations, nor do they establish a consistent and objective practice which can be easily identified. In constitutional terms, the guidelines do not meet the section 1 test that they must be prescribed by law.

Another difficulty lies not so much in the nature of the guidelines used, but rather in the people who are appointed to the boards. As King pointed out, the decis-

Cont'd on p. 4

M.-H. Boyle

Marie-Hélène Boyle, the vice-president for Eastern Canada of the Federal Advisory Council on the Status of Women, spoke about pornography and feminism. She began by pointing out the difficulty in defining pornography. The word is not used in a legal sense; for example, the Criminal Code refers to "obscenity". A definition of pornography

Cont'd on p. 5

Percy Corbett

1892-1983

In the Common Room on the north wall hangs a collection of portraits. In the bottom right corner is a picture of a man with a striking face, intense eyes, strong nose and chin. He is Percy Ellwood Corbett, the Dean of the Faculty of Law from 1928 to 1936. Percy Corbett died Monday last at the age of ninety.

I had the privilege of working with Dr. Corbett on a paper of which he was both subject and author. We met several times over the last year in Magog and at his home in Derby Line, Vermont.

Cont'd on p. 3

DEAN'S HOT SEAT

by Demetrios Xistris

On October 26 in the Moot Court, Dean Brierley was put on the "Hot Seat" to discuss student concerns. Approximately a dozen students showed up but this did little to hinder the quality of the dialogue that was presented. The Dean was queried on such issues as the recent student poll on the Dean Selection, the Placement Officer, Faculty needs, the exam schedule and other related topics. He hoped that this type of forum can be continued on a regular, perhaps bimonthly, basis.

Dean Brierley said that he could not judge nor fairly evaluate the weight which the students' poll on a new Dean would be given by the Selection Committee. It was clear from the Dean's comments that he did not want to make any comments on the selection, thinking it best that he remain publicly neutral.

However, with the matter of a placement officer, the Dean leaned back and opened up the discussion. This is not a new idea, he said. He has asked the LSA subcommittee to give him some input on the role of the placement officer by early November so that allocation can be made when the budget for the Faculty is set in late November if the placement officer is deemed to be worthwhile.

The Dean said he anticipates that within the next year, with some reorganization of the Faculty, a placement officer could be woven into the fabric of the school. He envisages it as a part-time contribution by a faculty member who would coordinate the program. The Dean reiterated that a placement officer has always

been a concern of the Faculty. Failure of previous attempts has been due to constraints, requiring that this worthwhile goal be abandoned.

John Iorio then asked the Dean about legal computer research facilities. The Dean responded, "The day is not very far away when these systems will exist throughout the faculty". He said that he was progressive in recognizing their need and that basic decisions will be made in the short run (such as whether to buy or rent). He also pointed out that the Faculty is not very far behind in computerization: witness the extensive word-processing systems already in place. These could eventually be hooked up to a system in the library.

When questioned on the exam schedule, the Dean replied that the problem was that there were 30 exams to cram into 10 days. The thought of starting school earlier was, he believed, not readily acceptable to the student body. In response, it was pointed out to him that at a General Assembly held last year the student body was prepared to start school earlier in return for a study week. The problem with first term, Dean Brierley observed, is that there are limited days and a number of immovable sacrosanct holidays which rigidly dictate the schedules. The Dean pointed out that at least the present system is better than the old one, where students had to write their exams in January after a break.

In probably the most informative exchange, the Dean was asked what he thought was the critical mass to make McGill a great law

school. His response, it can be said, reflects his impressions over a span of years at a school which has gone through many transitions. First, he said, we need a national student body which has linguistic duality. Second, a staff that is excited and working towards a creative curriculum. Third, a library that is vastly improved from the one which has been steadily eroded. The fourth suggestion was resources, for which he estimated a budget of approximately \$3 million excluding the library.

Dedication to these goals is what Dean Brierley sees as the cornerstone of a law school which the Faculty Review predicts has the ability to be great.

LSA Announcement

Law Faculty Scholarships Committee

The Law Faculty Prizes and Scholarships Committee requires the services of one undergraduate student representative.

The Committee's main function is to examine the possibility of creating new prizes when gifts or bequests are made to the Faculty, and to review existing prizes. In addition, the student representative works in consultation with class presidents in the selection of recipients of the Law Faculty Student Participation Award.

Any person interested in serving on this Committee is invited to leave a note for S. Fogarty at the LSA Office by Friday, November 11. Please indicate your phone number, so that you may be contacted for an interview.

Corbett

Cont'd from p. 1

Dr. Corbett spent his life ~~as~~ from his early days at Oxford and the International Labour Organization to his later positions at McGill, Yale, Princeton, Lehigh and myriad other universities and organizations ~~as~~ working to develop a theory of world law. Peace was always his ultimate object. Central to Corbett's theory was the individual. Today, it is Corbett the individual whom I wish to honour by sharing with you some of his thoughts which have served as a source of reflection and inspiration for me.

Dr. Corbett defined a particular view of law and human relationships:

"Law is our collective name for what is perhaps the most important set of institutions by which man has sought to reinforce his reason against his passions" (1956).

Dr. Corbett was always optimistic:

"I had my ideal human world ~~as~~ it was a world without denominational separations or distinctions. It was a world of all humanity. This is the world I thought of, and still think of, in spite of all its difficulties." (March, 1983)

But, in a very recent interview, he voiced what he hoped would be a warning rather than a prophecy:

"I frankly have very little hope of the maintenance of what we call human civilization beyond the next twenty-five or thirty years. Indeed, if we get into the twenty-first century with anything like our existing political organization, it would be a great surprise to

Moigners: What's wrong?

The right stuff. Mettle. Chutzpah. You either have it or you don't. The question now being asked is do the Moigners have it ~~as~~ and if so is it catching?

Wednesday night saw McGill's team drop a 41-39 heartbreaker in overtime. But that is not the issue here. The question is not whether they won or lost (for what meaning does victory have when we could all be incinerated in a nuclear showdown?) but did they cover the point spread?

The trade winds which blew through Chancellor Day earlier in the week, fanned in part by Paul Dunn's refusal to wear his new team blazer because it is "grotty to the max", have now reached gale force. The unex-

me...I shall not be here to witness it at all.

"I see children playing in the street. Small children, nice children. Quantities of them one sees still. And I ask myself, how much of a life are they going to have, how many years have they got, what prospect of a mature life have these youngsters got? And it seems to me a very small prospect.

"And the people of your age, generally, I find are going along, enjoying life, doing excellent work in their professions and so on, and I ask myself, what do they think of their future and their children's future?" (May, 1983)

My dealing with Mr. Corbett led me to realize that he was one of life's rare beings. His intellect matched his humanity. He had something to teach us all.

Kathleen Fisher

plained absence of Brian Ward Of The State has fueled ugly rumours that he may be taking a certain soft drink manufacturer's slogan literally. Tensions have also been heightened by charges that the long-delayed return of Rick "Mr.T" Elliott may be the result of too much Physiotherapy. Even heretofore quiet Art Evrensel has taken to wearing leisure suits in direct violation of the team's dress code prepared by Prof. Macdonald.

On a happier note, the Moigners are proud to announce the establishment of the Jane Glenn HisFive Scholarship. This award will be presented annually to the student who writes the best paper on why the abolition of Frankelmoign by the Administration of Estates Act, 1925 U.K. is contrary to the U.N. Charter's provisions prohibiting crimes against humanity. The paper will be judged by the Property Law Committee of the Canadian Bar Association and the Boston Cels-tics.

Also, the Moigners are pleased to announce that the search for Miss Moign '83 has begun. Once again students are asked to submit their nominations to any member of the team. The winner, after lengthy personal interviews, will be named in December. The prize will be, along with the envy of your peers, an all-expense-paid dinner at Burger King. (However, if the winner wants a Whopper, she will have to pay the difference herself). So keep those cards and letters coming in and remember to join the Moign Fan Club. See Steve Krieger for details.

Wayne Burrows

Stuart Robertson

In an animated and informative presentation, Ottawa communication lawyer Stuart Robertson decried the woeful lack of government interest in developing a coherent policy on censorship. He was especially critical of the Canadian Radio-Television Commission (CRTC) for not exerting greater leadership in this field. Recounting some personal experiences as both a lawyer for CBC and a private practitioner, Mr. Robertson underscored the confusion and vagueness of government policy.

Robertson outlined the problems of reconciling different views on what to air and what not to air over the public airways. In the absence of specific regulatory guidelines, what the CBC considers artistic may be viewed by a provincial attorney-general as obscene. Thus the latitude of prosecutorial judgement is an important element in all of this and serves only to increase the confusion as to what is acceptable or not acceptable to air.

Mr. Robertson maintained that the problem requires strong regulatory action on the part of the CRTC, something the Commission has been reluctant to undertake. While it has the power under the Broadcasting Act to enact regulations, the Commission has been relatively silent on the issue of obscenity on cable and pay television. There are very few provisions restricting obscene pictures or language on the public airwaves.

The CRTC also has the authority to licence ser-

vices. Mr. Robertson said this was a potential field for policy considerations but that the Commission has taken the position that it is not a censor board. Therefore its discretion to hold public hearings has been infrequently exercised in the censorship policy field. The only real regulation in this area has come about when public pressure forced the Commission to act.

In the absence of leadership in communications policy on the part of the CRTC, some provinces (notably Nova Scotia and Alberta) have enacted provincial regulations regarding licensing and policy of pay T.V. companies. While the provinces have no authority to enact this type of legislation, the cable and pay T.V. companies are accommodating the provinces in anticipation of delegated provincial control. The CRTC, in fact, is not adverse to this state of affairs. According to Mr. Robertson, it is willing to let the provinces indirectly regulate pay and cable T.V. services by allowing the province to prosecute under the obscenity provisions of the Criminal Code.

Mr. Robertson feels that the CRTC should not rely on self-regulation by the cable companies. The Commission has a clear responsibility under the Broadcasting Act to say what can be shown in any locale. In addition, it is essential to have clear regulations on what is or is not acceptable to air over the free airway system.

Dan Bilak

Erratum

The film "Not a Love Story" was sponsored by both Women and the Law and Forum National and not by the latter group alone as was indicated last week. Quid regrets the error.

Announcements

The Bookstore announces that the last day to return books is Thursday, November 3. We remind you that receipts are necessary for a refund.

Our last day of operation is Monday, November 21st. From that date we shall not be selling or accepting returns of any books.

A new committee is being formed & anyone interested in joining and helping to manage this service, is asked please to contact Joelle, Todd, Jane or Virginia in the Bookstore a.s.a.p.

Lynn King

Cont'd from p. 1

sion of one Board member to censor a film may be based on a traditional religious upbringing not reflected in the rest of the population. It is certainly not reflected in the pluralistic mosaic of large urban areas. The result is the persecution of gays and the artistic community, rather than a concerted attack on pornography per se.

Another target of censorship in Ontario was the award-winning film "Not a Love Story", which in fact was a scathing denunciation of pornography.

The solution, it would seem, is to formulate specific criteria that could be used to define "pornography". King pointed out that there are specific acts of violence in sex, or acts that degrade women which can be identified and singled out as guidelines for a censor board. In that way, King hopes, censorship can be directed against the real culprit: violent and degrading material.

Pearl Eliadis

M. Hartman

As a criminal lawyer working in Montreal, Milton Hartman acted as counsel for Penthouse magazine in litigation triggered by the Penthouse issue of December 1975. The use of criminal law as a means of regulating pornography is, according to Hartman, inappropriate. The Criminal Code provisions dealing with obscenity are so broad as to be virtually meaningless, and should be removed from the sphere of criminal law.

In Canada, the prevailing guideline for the evaluation of what constitutes obscenity, lies in the test laid down by the Supreme Court of Canada: the material in question must offend community standards. What, in fact, are those standards? No one seems to have a clear idea. Opinions vary as to the definition of "community". In the Penthouse case, the community encompassed all of Canada, for which a standard was difficult to formulate or express in any meaningful way. In another case, Associate Chief Justice Hugesson (as he then was) pointed to the vague and perilously subjective nature of the "community standards" test. Even if the test could be established, the standard changes so quickly that none could be a valid indicator over time.

One would expect that if a test of "community standards" is to prevail, evidence, perhaps expert evidence, could be adduced to help formulate the standard. Nevertheless, at least one Canadian court has indicated that expert evidence is unnecessary. There are also extreme fluctuations in the application of obscenity laws throughout Canada, bringing into question the appropriateness of a law that is meant to be uniformly applied across the country. Hartman used the

Quebec guidelines as an example of the regional independence that exists. The Attorney General of Quebec has issued guidelines creating three classes of pornographic material. The guidelines are intended to be used to determine when prosecution should proceed.

In summary, Hartman felt that the virtual impossibility of formulating precise guidelines in this area, the regional disparities involved, and the present unsatisfactory and vague nature of the law indicate that the regulation of obscenity (and, therefore, of pornography) has no place in the criminal law.

Pearl Eliadis

Boyle

Cont'd from p. 1

necessarily encompasses certain values, thus it is not possible to define it only in objective terms.

One of Mme Boyle's main points was that pornography involves a conflict between freedom of expression and freedom of trade. She stated that pornography involves the latter (it is a \$500 million a year business in Canada alone) and yet the former is invoked to protect it. In reality, it is the profits from the industry which interest the producers of pornography, and although they raise freedom of expression, it is merely used in order to do business as they please.

Mme. Boyle compared the regulation of pornography with the regulation of food and drugs to demonstrate the reasonableness of imposing limits on the former. With food and drugs, strict limits are imposed on consumption as a deemed necessity, that is, to safeguard the

health of consumers. Regarding pornography however, freedom to consume is a function of freedom to produce. The latter freedom establishes a much wider standard which Mme. Boyle suggests be narrowed.

As with certain food and drugs, the consumption of pornography has a detrimental effect on the consumer. Boyle cited figures to support her contention that pornography stimulates sexual violence: one in seven women in Canada are raped during their lifetime, one in five are victims of a sexual assault; since 1969, the figures have risen 125%. Pornography itself has existed for centuries, but its development into an industry which promotes universal availability is a new phenomenon.

The second part of Mme Boyle's lecture turned from the commercial enterprise of pornography to examine its actual content. She posed the question as to whether, at this level, freedom of expression should exist. Pornography, using the definition set out in Gillian Ridington's report prepared for the National Association of Women and Law, emphasizes domination, force, and violence. Pornography thus impinges on the freedom of (mostly) women and children to live with dignity, and without being perceived as objects of sexual violence. It is then a question of balancing freedoms: the freedom of the producer of pornography as opposed to the freedom of women and children.

Mme. Boyle ended by stating that in a society which values non-violence and equality, pornography, which violates these basic principles, should not be tolerated.

Sidney Fisher

Henri bans Coach T.; Risks DEATH!

by Eddie Shore

Moign' Madness watch out. The "A Team" is back for another year of prime-time action every Monday night. Skating in the friendly confines of the McConnell Rink, the "A Team" defeated their swashbuckling, beer-bellied buddies from Engineering: 3-0.

This year's congregation looks and sounds more like a bunch of guys who grew up on Harlem streetcorners singing Four Tops tunes than playing hockey on frozen ponds in Parry Sound. Pre-game strategy was discussed to the sounds of a "subway special", "mean machine" or "master blaster" which played the soulful inspiration of Michael Jackson, Marvin Gaye, and Earth Wind and Fire.

Bopping and hopping onto the ice only to find out that coach Punch ("if I see Henri one more time...") Tresham had been suspended, not only from the game, but also from the coaching ranks, the "A Team" showed heart by jumping out to a first period lead with a

goal by Farrell Miller.

With Mr. T on the bench getting his short shifts to swing his stick, the "A Team" relied on intimidation for the remainder of the period. However, this style did not always pay off as Neil ("It's two minutes if you lose your helmet") Cobb was a victim of a vicious hit and run by two green shirts whereupon he lost his helmet.

As the pace slowed down so that the players could digest dinner, Nick ("Anybody wanna run a Triathlon?") Vlahos picked up a loose puck and blasted one off Pierre ("I'm not bringing the beer this year") Lataverse's stick for a 2-0 lead after 2 periods. Pierre has already equalled last year's goal output.

Bruce ("Hey D...we're, uh, going to be awesome this year") Randall induced a penalty with a Rudy Nureyev swan dive to start the third frame and Nos Glorieux quickly capitalized as Neil ("I had this guy all over

me") Cobb banged one in from the slot to make it 3-0.

The rest of the period was just played out for the fans except for one slight altercation when D ("Whatta ya mean you don't like this song?") Xistris had to be restrained from jumping into the Engineer's bench after he manhandled 2 green shirts with his sword with 13 seconds to play in front of the visitors bench.

As the Budweiser was cracked open in the post-game aftermath to the strains of Flashdance, the veterans laden squad welcomed the new rookies (and soon-to-be-rookies) to the most important and evergrowing alumni network in the law school (the "A Team"). This year's post game parties are barred from Gertrude's (a couple of run-ins last year with management) but the team bishops are confident that they will find a place before the next case of two-four runs out. Student support is encouraged as the only groupies we have are the players' parents, who attend in full force every week.

Top Judges converge on Bar Prize

The Bar Prize Moot will be held on Saturday, November 5, 1983 at 2:00 p.m. The Honourable George Montgomery, the Honourable Claire L'Heureux-Dubé of the Court of Appeal, and the Honourable Melvin Rothman of the Superior Court have graciously agreed to form the bench.

The format of the moot is an appeal from a decision of the Supreme Court of Canada. In other words, we are revising the Privy Council for a day. The decision under

appeal is Jabour v. The Law Society of British Columbia; The Law Society of British Columbia v. The Attorney General of Canada. The basic facts are: Mr. Jabour advertised his fees in a newspaper. The Benchers ruled this "conduct unbecoming a member of the Law Society" and suspended him for 6 months. Mr. Jabour went to court. So did the Law Society, and the Restrictive Trade Practices Commission. The issues are (1) the applicability of the

Combines Investigation Act and (2) whether the prohibition on advertising violates Mr. Jabour's right to free speech under the Canadian Charter.

John Crothers, Julie Latour, Carole Sheppard, and Michael Shuster are the students who will represent McGill. A special invitation is extended to first-year student to enjoy this opportunity to be inspired by four of McGill's most talented oral advocates.

Ken Swan

Cont'd from p. 1

prohibiting child pornography or "snuff" films (pornographic films where women, usually from third world countries, are actually murdered). In other words, it is not all right to film actual crimes. It is, however, all right to film enactments of crimes: rape, domination and other violent sexual behaviour, in this context.

Legislating against pornography is also impossible, Swan argued, because it is impossible to define it. Virtually insurmountable problems in definition would lead to broad provisions that could be easily abused by zealous censors. Furthermore, our police forces are already overtaxed. Asking them to allocate substantial resources to enforcing pornography provisions could weaken our already "stretched-thin" forces.

The only way to deal with a racist, Swan said, is to let his views be expressed out in the open. Everyone will then see how ridiculous and disgusting those views actually are. Similarly, the pornographer should not be censored. Education and counter-propaganda are the real tools in attempting to eradicate pornography from our society.

Pearl Eliadis

Board of Student Advisors

"What will happen to the B.S.A.? The Curriculum Committee has established a subcommittee to examine the role and operation of the Board of Student Advisors in our faculty. The student members of that committee want to hear your ideas on the B.S.A. and the teaching of legal writing generally. They'll be meeting with all those interested on Tuesday, November 8, in Room 101. Be there.

After First Meeting Percy Corbett

Is it we who are women who are moved?

When an old man
dresses in a tie and an old cashmere sweater
with holes in the elbows to tell me about
his life
an illustrious life
a life so full we don't know where to begin.

He is so excited.
I am so overwhelmed.
His greatness is brushed aside.
I am to lead
He is so anxious to help.

Is it we who are women who are moved?

When an old friend finds a link to his mentor
older still
and sparks light up in his eyes
at the recollection
at the memories
the inspiration, aspirations, dreams
lived out
or
never to be realized.

Is it too touching
to be stirred
by a great man on the wane
striving to the last
giving until the end
all that he can?

Him grateful to me
for being interested
Me totally unable to accept this modesty
as I am in awe of the image
Yet totally slain by the humility
and graciousness of a kind soul.

This is something I can't quite put my finger on.
It is so powerful.

I have seen young men die before they ever bloomed.
I saw the tragedy.
I am seeing old men who have bloomed, who have
lived, who have realized so so much,
and more.

Yet everyone asks
Is he senile?
Can he remember?
And doubts my assessment of a, true, imperfect memory
but vivid, complete and the names forgotten
take only minutes to fill in after a brief search
through an address book or a pile of letters.

This old man is so vital, so alive, so caring, so feeling
that it moves me
to tears
and I ache
for
from
something I can't quite put my finger on.
I am touched.



**14 oz.
398ml**

heat resistant

LEGAL FOODS

B5942

**FEEDS
YOU!**

Hours:

© INTERNATIONAL

**mon - thus 8:00 - 5:00
fridays 8:00 - 2:00**

PRINTED IN ENGLAND

Food & Beverage Dept. McGill Students' Society

LOCATED IN THE BASEMENT OF CHANCELLOR DAY HALL, 3644 PEEL ST.